

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

ABC UNIFIED SCHOOL DISTRICT, SAN
DIEGO UNIFIED SCHOOL DISTRICT,
PASADENA UNIFIED SCHOOL
DISTRICT; CENTINELA VALLEY
UNION HIGH SCHOOL DISTRICT; AND
CALIFORNIA DEPARTMENT OF
EDUCATION.

OAH Case No. 2015010208

ORDER GRANTING CALIFORNIA
DEPARTMENT OF EDUCATION'S
MOTION TO DISMISS

On January 6, 2015, Parent on behalf of Student filed a Request for Due Process Hearing (complaint) with the Office of Administrative Hearings, naming ABC Unified School District and Pasadena Unified School District. On January 27, 2015, Student filed an amended complaint, naming only ABC. On April 20, 2015, Student filed a second amended complaint, naming ABC, Pasadena, San Diego Unified School District, Hawthorn (sic) Unified School District, and the California Department of Education. On April 21, 2015, Student filed a Notice of Error and Corrected second amended complaint, naming ABC, Pasadena, San Diego, the Department of Education, and substituting Centinela Valley Union High School District for Hawthorn (sic). On May 8, 2015, the Department of Education filed a motion requesting its dismissal from the complaint. On May 11, 2015, Student filed Opposition to the Department of Education's motion to dismiss. On May 12, 2015, Centinela filed Opposition to the Department of Education's motion to dismiss. ABC, Pasadena, and San Diego did not file opposition.

Generally, the Department of Education seeks dismissal because it typically only has supervisory responsibility for special education programming and is not directly responsible for providing educational programming or services. The Department of Education states it never provided Student with a free appropriate public education and Student has not asserted any facts against the Department of Education that would cause the Department of Education to be responsible for providing Student with a FAPE.

In opposition, Student states that the Department of Education has failed to provide a declaration or other authenticated evidence to support its request for dismissal. Student also asserts that the Department of Education is seeking a ruling on the merits to which it is not entitled.

In its opposition, Centinela raises other issues. Centinela argues that three of the four other named school districts are refusing to offer Student placement in a residential treatment center because each of the three districts take the position that Student is not a resident of their respective school district. Centinela argues that the Department of Education would be the agency responsible for providing Student with a FAPE if none of the four named school districts is the local educational agency. As this would require an evidentiary hearing, the motion to dismiss should be denied as premature.

APPLICABLE LAW

The Individuals with Disabilities Education Act (20 U.S.C. § 1400 et seq.) and California state law counterparts do not set forth a procedure for dismissing claims on the merits without first affording the petitioning party a chance to develop a record at hearing. The Administrative Procedures Act (Gov. Code, § 11340 et seq.) requires that parties appearing before the OAH receive notice and an opportunity to be heard, including the opportunity to present and rebut evidence. (Gov. Code, § 11425.10, subd. (a)(1).) However, at a prehearing conference, an administrative law judge may address such matters “as shall promote the orderly and prompt conduct of the hearing” (Gov. Code, § 11511.5, subd. (b)(12)), and at hearing, an ALJ may take action “to promote due process or the orderly conduct of the Hearing.” (Cal. Code Regs., tit. 1, § 1030, subd. (e)(3).) Also, as an administrative tribunal, the OAH has jurisdiction to determine the extent of its own jurisdiction and power to act. (See *People v. Williams* (2005) 35 Cal. 4th 817, 824.)

Accordingly, OAH may dismiss a matter in its entirety, or one or more claims, where it is evident from the face of the complaint that the alleged issues fall outside of OAH jurisdiction or the pleaded facts cannot sustain a claim. Such circumstances may include, among other things, complaints that assert civil rights claims or claims seeking enforcement of a settlement agreement, or that assert claims against an entity that cannot be legally responsible for providing special education or related services under the facts alleged.

Special education due process hearing procedures extend to a student’s parent or guardian, to the student under certain conditions, and to “the public agency involved in any decisions regarding a pupil.” (Ed. Code, § 56501, subd. (a).) The “public agency” may be “a school district, county office of education, special education local plan area, . . . or any other public agency . . . providing special education or related services to individuals with exceptional needs.” (Ed. Code, §§ 56500 and 56028.5.) Similarly, the Code of Federal Regulations provides that the term “public agency” encompasses state educational agencies such as the Department of Education, as well as local educational agencies such as ABC, Pasadena, Centinela, and San Diego, “and any other political subdivisions of the State that are responsible for providing education to children with disabilities.” (34 C.F.R. § 300.33 (2012).)

The IDEA leaves it to each state to establish mechanisms for determining which of the state’s public agencies is responsible for providing special education services to a

particular student, and procedures for resolving interagency disputes concerning financial responsibility. (20 U.S.C. § 1400(d)(12)(A); *Manchester School District v. Crisman* (1st Cir. 2002) 306 F.3d 1, 10-11.) Under California law, the public agency responsible for providing education to a child between the ages of six and 18 is generally the school district in which the child's parent or legal guardian resides (Ed. Code § 48200), although certain responsibilities, such as the provision of special education services in juvenile court schools, may be regionalized by local plans and administered by county offices of education (Ed. Code, §§ 56140; 56195; 56195.5; 56205-56208; 46845 et seq.). OAH may determine the residency of a parent or guardian in a due process proceeding and establish the public agency responsible for the student's special education. (See *Union School Dist. v. Smith* (9th Cir. 1994) 15 F.3d 1519, 1525; *J.S. v. Shoreline School Dist.* (W.D. Wash. 2002) 220 F.Supp.2d 1175, 1191.)

DISCUSSION

Under the IDEA, a state educational agency such as the Department of Education is responsible for "general supervision" of state special education programs to ensure, among other things, that IDEA requirements are met. (20 U.S.C. § 1400(d)(11)(A).) The Department of Education is generally not a party to due process proceedings because a local educational agency, such as a school district or county office of education, is the public agency that is responsible for providing special education services, and "involved in any decisions regarding [the] pupil." (Ed. Code § 56501, subd. (a).) There are exceptions to this general rule.

For example, the Department of Education is the responsible public agency in due process hearings involving students attending the state schools for the deaf and for the blind that are operated by the Department of Education (Ed. Code, §§ 59002; 59102). Here, Student makes no claim of a state school's involvement; thus, this exception is inapplicable.

The Department of Education may also be responsible for providing special education, by default, if conduct of the legislature or the Department of Education has made it impossible to identify a responsible local educational agency. (See *Orange County Department of Education v. California Department of Education* (9th Cir. 2011) 668 F.3d 1052, 1063; *Los Angeles Unified School Dist. v. Garcia* (9th Cir. 2012) 669 F.3d 956, 960 (citing *Orange County*).) Further, the Department of Education may be responsible for providing special education services where the relevant local educational agency is unable or unwilling to provide those services. (*Garcia*, at p. 960, citing 20 U.S.C. § 1413(g).) Here, these exceptions are similarly inapplicable.

In the complaint, Student alleges that the Department of Education is an appropriate party because of its supervisory oversight of special education programs as the state educational agency and therefore has the responsibility for the general supervision and implementation of the IDEA. (20 U.S.C. § 1412(a)(11)(A); 34 C.F.R. § 300.149(a)(2006).) Student makes no other factual assertions regarding the Department of Education.

The complaint does not contain factual allegations that, if proven at hearing, would result in the Department of Education being found legally responsible to provide Student with a FAPE. Student asserts in his opposition that ABC and Pasadena each claim not to be Student's local educational agency and, therefore, refuse to provide Student with residential treatment center placement. However, Student's complaint does not make such assertions. Rather, Student alleges detailed facts in his second amended complaint in support of either Pasadena or ABC being the LEA responsible for Student, which OAH would determine.

Thus, other than referring to the Department of Education as the responsible state educational agency, Student makes no factual assertions involving the Department of Education. The complaint does not assert that the present legal framework makes it impossible to identify the responsible public agency; thus, the second exception to the general rule is inapplicable. Further, the complaint does not state that any of the four districts, much less all of the districts, have refused to acknowledge their local educational agency status; thus, the third exception to the general rule is unavailable. As such, the complaint does not assert facts that would support a finding against the Department of Education, and therefore Department of Education is dismissed.

ORDER

1. The motion is granted and the California Department of Education is dismissed as a party in this action.
2. The matter will proceed as scheduled against the remaining parties.

IT IS SO ORDERED.

DATE: May 22, 2015

/s/

TED MANN
Administrative Law Judge
Office of Administrative Hearings